

The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

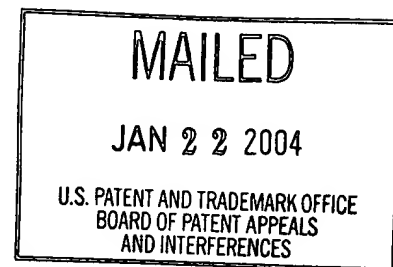
Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte C. ALEXANDER TURNER, JR. And
BRIAN MATHUR

Appeal No. 2003-2073
Application No. 09/714,883



Before HARKCOM, Acting Chief Administrative Patent Judge, and WINTERS and
WILLIAM F. SMITH, Administrative Patent Judges.

WILLIAM F. SMITH, Administrative Patent Judge.

REMAND TO THE EXAMINER

Our consideration of the record leads us to conclude that this case is not in
condition for a decision on appeal. Accordingly, we remand the application to the
examiner to consider the following issues to take appropriate action.

1. Reply Brief.

An Examiner's Answer was entered on April 9, 2003 (Paper No. 22). A Reply
Brief was received on August 11, 2003 (Paper No. 26), accompanied by a "Petition for

Extension of Time Under 37 CFR 1.136(a)." (Paper No. 26). Extensions of time are not permitted under 37 CFR § 1.136(a) for a Reply Brief. See 37 CFR § 1.136(a)(1)(ii).

Accordingly, the Reply Brief is untimely.

2. Examiner's Answer.

The Examiner's Answer is stated to be in response to the Appeal Brief filed January 22, 2003. Id., page 1. That Appeal Brief contains Exhibits A-P. The Examiner's Answer does not acknowledge the existence of Exhibits A-P.


Upon return of the application, the examiner needs to clarify the record as to the status of Exhibits A-P attached to the Appeal Brief of January 22, 2003. Entry of exhibits after the Notice of Appeal has been filed is governed by the provisions of 37 CFR § 1.195. Thus, the examiner should review the Appeal Brief and determine whether the exhibits attached to the Appeal Brief are properly entered under that rule. If the examiner determines that the exhibits are properly entered, a substantive response to the newly entered evidence is needed. In this regard, we state that we are authorizing a Supplemental Examiner's Answer under 37 CFR § 1.193(b)(1) if otherwise appropriate.

If, on the other hand, the examiner determines the exhibits are not properly entered, an appropriate Office action needs to be issued informing appellants of that decision so that a determination can be made whether administrative relief by way of petition will be sought. If the examiner determines that the exhibits cannot be properly entered, the communication informing appellants of that decision should also require

This application, by virtue of its “special” status, requires an immediate action. Manual of Patent Examining Procedure § 708.01 (8th ed., rev. 1, February 2003). It is important that the Board be informed promptly of any action affecting the appeal in this case.

REMANDED

Sherman D. Winters
Administrative Patent Judge


William F. Smith
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

Appeal No. 2003-2073
Application No. 09/714,883

Page 4

Lexicon Genetics Incorporated
8800 Technology Forest Place
The Woodlands, TX 77381-1160

dem